

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

---

|  |   |                    |
|--|---|--------------------|
| Commonwealth Edison Company                  | ) |                    |
|  | ) |                    |
| Petition for approval of an Alternative Rate | ) | Docket No. 10-0527 |
| Regulation Plan pursuant to Section          | ) |                    |
| 9-244 of the Public Utilities Act            | ) |                    |

---

**REPLY BRIEF ON EXCEPTIONS**  
**OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

April 26, 2011

JOHN C. FEELEY  
JENNIFER L. LIN  
MEGAN C. MCNEILL  
JOHN L. SAGONE  
Illinois Commerce Commission  
Office of General Counsel  
160 N. LaSalle St., Ste. C-800  
Chicago IL 60601  
312-793-2877  
[jfeeley@icc.illinois.gov](mailto:jfeeley@icc.illinois.gov)  
[jlin@icc.illinois.gov](mailto:jlin@icc.illinois.gov)  
[mmcneill@icc.illinois.gov](mailto:mmcneill@icc.illinois.gov)  
[jsagone@icc.illinois.gov](mailto:jsagone@icc.illinois.gov)

## TABLE OF CONTENTS

|      |  |    |
|------|--|----|
| I.   | INTRODUCTION / RELIEF REQUESTED .....  | 1  |
| II.  | RATE ACEP PROPOSAL .....   | 1  |
|      | A. Proposed Budget Baseline .....  | 1  |
|      | B. Recovery of O&M Expenses .....  | 1  |
|      | C. Recovery of Capital Investments .....   | 1  |
|      | D. Proposed Projects .....   | 1  |
|      | E. Mechanism for Future Rate ACEP Projects .....   | 1  |
|      | F. Proposed Rate ACEP Review Procedure .....   | 1  |
| III. | STATUTORY REQUIREMENTS .....   | 2  |
|      | A. Section 9-244(a) .....  | 2  |
|      | B. Section 9-244(b) .....  | 2  |
|      | 1. Finding under 9-244(b)(1) .....   | 4  |
|      | 2. Finding under 9-244(b)(2) .....   | 4  |
|      | 3. Findings under 9-244(b)(3) – (b)(7) .....   | 6  |
|      | 4. Finding under 9-244(b)(8) .....   | 6  |
|      | C. Section 9-244(c) .....  | 6  |
|      | D. Request for Approval of Rate ACEP – Accelerated Customer Enhancements Pilot<br>("Rate ACEP") Tariff ..... | 6  |
|      | E. Rate Design Issues .....  | 6  |
|      | F. Interaction with General Rate Case .....  | 6  |
| IV.  | IMMEDIATE PROJECTS .....   | 6  |
|      | A. Low-Income Customer Assistance Program .....  | 6  |
|      | B. Urban Underground Facilities Reinvestment ("UUFR") .....  | 8  |
|      | C. Utility Electric Vehicle ("EV") Pilot .....   | 9  |
| V.   | SMART GRID .....   | 14 |
| VI.  | CONCLUSION .....   | 14 |

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

---

|  |   |                    |
|--|---|--------------------|
| Commonwealth Edison Company                  | ) |                    |
|  | ) |                    |
| Petition for approval of an Alternative Rate | ) | Docket No. 10-0527 |
| Regulation Plan pursuant to Section          | ) |                    |
| 9-244 of the Public Utilities Act            | ) |                    |

---

**REPLY BRIEF ON EXCEPTIONS  
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

NOW COMES Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s Rules of Practice (83 Ill. Adm. Code 200.800), and respectfully submits its Reply Brief on Exceptions in the instant proceeding.

**I. INTRODUCTION / RELIEF REQUESTED**

Aside from issues addressed in its Brief on Exceptions (“BOE”), Staff stands by its positions articulated in testimony and in its Initial Brief (“IB”) and Reply Brief (“RB”). Failure to address a specific issue does not constitute a change in position. Staff continues to recommend that the Commission deny ComEd’s petition for approval of its alternative regulation (“Alt. Reg.”) plan.

**II. RATE ACEP PROPOSAL**

- A. Proposed Budget Baseline**
- B. Recovery of O&M Expenses**
- C. Recovery of Capital Investments**
- D. Proposed Projects**
- E. Mechanism for Future Rate ACEP Projects**

See Section V. below.

- F. Proposed Rate ACEP Review Procedure**

### **III. STATUTORY REQUIREMENTS**

#### **A. Section 9-244(a)**

#### **B. Section 9-244(b)**

ComEd's BOE begins with a series of general statements concerning the PO. ComEd, however, neither directly quotes from nor cites to passages within the PO to substantiate or elucidate its claims. Staff believes that these general, unsupported statements can and should be disregarded.

ComEd calls Rate ACEP a pilot program. (ComEd BOE, p. 4) However, the proposed tariff must still comply with Section 9-244. The PO rightly found that the tariff does not. Being temporary does not overcome any flaws relative to Section 9-244. This same point applies to any discussion of the relative amounts in total annual costs that are scheduled to flow through Rate ACEP.

ComEd argues that the projects in Rate ACEP are beneficial. (ComEd BOE, Section III., pp. 8-31) Staff agreed that the UUFR project may be beneficial (Staff IB, pp. 18-20), but it does not agree that ComEd has demonstrated that the benefits from LIAP or the EVP, the other two programs for which ComEd is seeking approval in this proceeding, would exceed their respective costs. The LIAP is simply a transfer of costs from one group of ratepayers to another, while EVP provides no obvious benefit based upon current activity.

ComEd claims that "Customers do not pay more if ComEd comes in under budget. The reason being only actual costs are recovered through Rate ACEP and not budgeted costs." (ComEd BOE, p. 34) However, it then corrects itself when it notes that there is "50/50 sharing on the capital investment expenses." Additionally, ComEd

acknowledges that “customers pay no ‘premium’ or ‘fee’ unless ComEd is able to deliver those investments for less than the approved budgeted costs.” (ComEd BOE, p. 23) This means that the PO is correct when it states that, “It appears to the Commission that every time ComEd spends less than 95% of its proposed budget, ratepayers pay more than ComEd’s actual costs.” The 50/50 sharing is sharing between the budgeted amount and actual costs. Ratepayers pay more than ComEd’s expenditures.

ComEd’s BOE is replete with phrases like “cost savings,” “reduced costs” and “lowering costs.” But ComEd does not demonstrate that Rate ACEP would actually lower costs. (Staff IB, pp. 52-54) ComEd proposed budgets which, under Rate ACEP, it compares to actual costs incurred. However, expenditures relative to these budgets are not direct evidence of ComEd’s efficiency relative to traditional regulation. If ComEd’s expenditures on a project are below its budget, that does not prove that Rate ACEP causes ‘cost savings.’ It could be that input prices are lower than expected or that fewer inputs are needed than planned for. (Staff Ex. 1.0R, pp. 17-18) That result is not induced by the prospect of cost savings, but by the project being different from what was planned.

There is a contradiction at the heart of ComEd’s position. On the one hand, ComEd claims that ‘enhanced’ incentives induce it to generate ‘cost savings.’ (e.g., ComEd BOE, p. 2) On the other hand, ComEd would have the Commission believe that it is insulted by suggestions that it would respond to the incentive to inflate its budget. (*Id.*) If it is true that ComEd would be responsive to the purported incentive to conserve costs below traditional regulation levels, then it is simply implausible that it would not be equally responsive to the obvious incentive to inflate its budgets. The PO’s decision to reject Rate ACEP is correct and should be adopted by the Commission.

**1. Finding under 9-244(b)(1)**

On pages 40-42 of its BOE, ComEd focuses on the PO's statement on page 32 and discusses regulatory lag. The PO correctly notes the importance of regulatory lag in traditional regulation. It tends to induce cost reductions over time by allowing the utility to retain any cost reductions between rate cases. That incentive has worked well over time for utilities. The utility benefits between rate cases by recovering revenues that exceed its costs, and ratepayers benefit when those cost reductions are recognized in the subsequent rate case. In order for ComEd to demonstrate cost savings for ratepayers under Rate ACEP, it must explain how Rate ACEP's incentives to conserve costs are superior to regulatory lag. In fact, the key reason why Staff argued that ComEd could not demonstrate compliance with (b)(1) is that ComEd did not compare total costs over time between the two regulatory regimes. (Staff IB, pp. 52-54) Staff discussed numerous times in testimony and briefs why ComEd cannot simply rely upon the incentive effects contained in its proposal as proof of concept. (*Id.*; Staff Ex. 1.0R, p. 17; Staff Ex. 8.0, p. 18) In particular, measuring costs relative to a budget does no more than compare actual expenditures to expected expenditures, taking ComEd's incentive to increase the budget into account. That is not the same thing as comparing costs under traditional regulation to costs under Rate ACEP.

**2. Finding under 9-244(b)(2)**

ComEd argues that the PO misreads the statute at (b)(2). (ComEd BOE, pp. 43-45) Staff disagrees. ComEd wants to interpret (b)(1) in one way and (b)(2) in another. In arguing its case under (b)(1), ComEd would have the Commission compare costs imposed on ratepayers under traditional regulation with costs under Rate ACEP, with all

projects being implemented in each case. However, for purposes of (b)(2), ComEd reverses course and argues that the comparison should be to the case when no resources are expended under traditional regulation. This makes compliance with (b)(2) automatic. (ComEd BOE, p. 6) The condition means little unless it requires the alternative regulation proposal itself, not just the projects, to deliver benefits not otherwise available. (Staff IB, pp. 55-56) But ComEd claims that it would not undertake the projects, which makes any potential benefits from them by definition unavailable under rate of return regulation. (*Id.*)

Finally, Staff points out that ComEd has claimed that none of the projects that are proposed for Rate ACEP are necessary for utility service. (Staff Ex. 13.0, pp. 3-4; Staff IB, p. 8) Staff continues to contend that Section 9-211 and Section 8-406 apply to expenditures under Section 9-244. (*Id.*) This implies that none of the projects pass the statutory test required for utility expenditures. Unless and until ComEd secures Commission approval that its investments and activities are prudent, necessary and reasonable in cost, under whatever test for those standards the Commission chooses to apply, ComEd should not be authorized to recover costs of those investments and activities from its ratepayers. (Staff IB, p. 8) As such, for the reasons set forth above and those previously stated in Staff's IB, RB, and as set forth in Staff witness Dr. Rearden's testimony (Staff Ex. 1.0, p. 25), Staff cannot find any modifications to ComEd's Rate ACEP that would allow the tariff to conform to Section 9-244. Accordingly, Staff supports the AG's exception which appropriately points out that the Commission's final order should contain a specific finding that there are no modifications supported in the record that would cause ComEd's alternative regulation program to satisfy the criteria of Section 9-244. (AG BOE, pp. 3-4)

**3. Findings under 9-244(b)(3) – (b)(7)**

See discussion in IV.C. for 9-244(b)(5).

**4. Finding under 9-244(b)(8)**

**C. Section 9-244(c)**

**D. Request for Approval of Rate ACEP – Accelerated Customer Enhancements Pilot (“Rate ACEP”) Tariff**

**E. Rate Design Issues**

**F. Interaction with General Rate Case**

**IV. IMMEDIATE PROJECTS**

**A. Low-Income Customer Assistance Program**

ComEd takes exception to the PO’s conclusion regarding the Low Income Assistance Provisions (LIAP) of Rate ACEP. (PO, pp. 57-64) ComEd presents no new arguments or evidence in support of its proposal that LIAP costs should be recovered from ratepayers. Staff agrees with the PO’s conclusions that the LIAP (1) does not provide benefits to ratepayers, (2) ComEd did not present a budget, and (3) the program is not necessary or appropriate under the requirements of Section 9-244 of the Act. ComEd’s arguments are summarized below. (ComEd BOE, pp. 26-29)

First, ComEd opines, without any supporting analysis or studies, that the LIAP will provide customer benefits because if these programs are not continued more customers will be unable to pay their bills. (Id., p. 27) According to ComEd’s logic, the more customers who receive assistance with their bill, the less the uncollectible expense will be for the Company. Thus, ComEd reasons that the LIAP will provide benefits to the ratepayers. This logic is shortsighted because, as the PO correctly concludes, Rate ACEP merely passes through the costs of the LIAP to ratepayers in the form of higher rates, which means that ratepayers overall do not benefit (i.e., it’s a



wash). ComEd's "customer benefit" argument is flawed and should be rejected by the Commission.<sup>1</sup>

Second, ComEd takes issue with the PO's conclusion that it did not present a LIAP budget. Although ComEd frequently made the statement in testimony that it is proposing a \$10 million annual funding of the LIAP (ComEd Ex. 5.0, pp. 1 and 14), ComEd did not present a budget that detailed how the funds were to be expended for the identified programs in the future. The chart on pages 4-6 of ComEd Ex. 5.0 summarizing historical features of the various CARE programs does not constitute a budget. Therefore, Staff agrees with the PO that ComEd did not present a LIAP budget, and the PO's conclusion is correct.

Finally, ComEd disputes the conclusion reached in the PO that the alternative regulation requirements of Section 9-244 are not the proper venue to examine the LIAP proposal. The PO further emphasizes, and notwithstanding any merits of the program, that ComEd's proposal borders on duties reserved to the legislature. Staff agrees with the PO's assessment that the LIAP was included in an effort to make an otherwise questionable proposal more palatable. Therefore, ComEd's "necessary and appropriate" argument is misplaced and should be rejected by the Commission.

For all the reasons stated previously, ComEd's proposed LIAP should be denied.

---

<sup>1</sup> See Staff IB, pp. 41-47, for a general discussion regarding utilities' current and future mandatory low-income funding obligations and the effect on ratepayers. Staff believes the discussion at these pages of its IB are important for the Commission to consider when making an informed decision on this issue.

**B. Urban Underground Facilities Reinvestment (“UUFR”)**

ComEd has demonstrated an affinity for ignoring relevant facts in order to support its convoluted arguments that support its position. As an example, ComEd makes the following argument:

... the Proposed Order is incorrect when it states that there is no basis to assume that any of the costs associated with the UUFR project would not be recovered from customers under traditional regulation if they are otherwise reasonable and prudent. Traditional regulation bases cost recovery on test year snippets. The return on and of UUFR investments between the time made and the inclusion of such costs in new rates is forever lost under traditional regulation. Moreover it would be difficult, if not impossible, to fit the proactive O&M costs of the short term UUFR project into either an historical or future test year. See Hemphill Dir., ComEd Ex. 1.0, 8:159-9:179; Hemphill Reb., ComEd Ex. 6.0, 19:411-20:442; Staff Group Cross Ex. 1, pp. 29, 31. The appropriate remedy to these issues is to delete the unnecessary language from the Proposed Order. (ComEd BOE p. 20)

Staff clearly showed on the record that the UUFR project represents but a very modest part of ComEd’s total rate base and a tiny fraction of ComEd’s approximately \$900 million annual additions to rate base. (Staff IB, p. 20) Staff noted that ComEd recovers a return on all used and useful and reasonably priced investments proposed for inclusion in rate base in a traditional rate case – not a single investment as ComEd wants everyone to believe. (Tr., January 19, 2011, p. 320) By engaging in doublespeak regarding the dynamics of rate cases, ComEd is attempting to redirect Commission attention away from the many operational efficiencies and other benefits that the UUFR project brings to its distribution system as well as positive earnings impacts for ComEd shareholders. (Staff IB, p. 18) Staff has pointed out that, until new rates became effective following their next rate case, ComEd would reap the operational savings from completing the UUFR project that could very well offset any O&M expenses from

implementation of that project. (Staff Group Cross Ex. 1, p. 31) Therefore, ComEd's Exception Nos. 4, 12, and 15 should be rejected and Staff's proposed language to page 77 of the PO should be adopted by the Commission for the reasons set forth on page 2 of Staff's BOE.

### **C. Utility Electric Vehicle ("EV") Pilot**

The Commission should reject ComEd's proposed language on the Electric Vehicle Pilot issue. (ComEd Exceptions, Nos. 6, 13, 15, pp. 46, 95-98, 106-107; ComEd BOE, pp. 20-26, 52-53) ComEd seeks approval of the EV Pilot program and its targeted investment expenditure amount of \$4.43 million, including the carrying charges that it would be allowed to immediately recover under Rate ACEP. (ComEd Exceptions, pp. 95-96) ComEd's BOE contains arguments about its EV Pilot program that Staff has already thoroughly rebutted. (See Staff IB, pp. 26-41, 57-58; *and* Staff RB, pp. 12-35) Therefore, Staff will not repeat those observations here. However, Staff sees merit in highlighting and clarifying a few points that ComEd has misconstrued. As explained below, ComEd misinterprets evidence and incorrectly argues that its EV Pilot budget is not inflated and that it cannot "substitute" cheaper equipment to "game" its budgets. (ComEd BOE, pp. 21-26) Staff believes that with respect to the EV Pilot issues, the PO's conclusions are correct, are amply supported by the record, and the only changes needed to the PO are those proposed by Staff as noted in its BOE. (Staff BOE, pp. 3-4, 7)

#### **ComEd's EV Pilot Budget is Inflated**

ComEd argues, "[T]he assertion supporting the Proposed Order's incorrect conclusion that that [sic] ComEd inflated the EV budget was the speculation that 'bulk

discounts' might be available for charging stations" and "such speculation cannot support the Proposed Order's actual finding that ComEd inflated its EV Pilot budget." (ComEd BOE, p. 21) ComEd misconstrues the basis of the PO's correct finding that ComEd has an incentive to inflate its budgets under its proposed Alt. Reg. plan, and that it has in fact inflated its proposed EV Pilot budget in this proceeding. While the PO clearly cites to page 21 of Staff's RB when making this statement,<sup>2</sup> ComEd inappropriately claims the basis of this statement was due solely to ComEd's lack of incorporation of bulk discounts for charging stations in its EV Pilot budget. (ComEd BOE, p. 21; PO, p. 91) Certainly, ComEd's failure to include bulk discounts for charging stations in its EV Pilot budget is troubling. However, Staff's statement regarding the fact that ComEd has inflated its EV Pilot budget was made in the context of Staff's extensive documentation of ComEd's inflated hybrid bucket truck budget, not "speculation" regarding bulk discounts for charging stations, as the PO correctly cites to when making this statement. (PO, p. 91; Staff IB, p. 32; Staff RB, pp. 19-21) ComEd's invoices for its past purchases of hybrid bucket trucks clearly demonstrate that ComEd inflated its EV Pilot budget, of which the hybrid bucket trucks are only one component. (Staff Ex. 2.0

---

<sup>2</sup> The PO states, "The Commission agrees with Staff when it states in its Reply Brief that not only does ComEd have 'an incentive to inflate its budgets under its proposed Alt. Reg. plan, but also that it has in fact inflated its proposed EV Pilot budget.' Staff RB at 21." (PO, p. 91) The context in which Staff stated this position is presented on pages 19-21 of Staff's Reply Brief, where it states:

However, ComEd shifted its position once again in its Initial Brief, stating, "The \$250,000 unit cost is the average of the prices paid by ComEd for a hybrid bucket truck in 2009." (ComEd Revised IB, p. 23, emphasis added) ComEd apparently wished to clarify its position once again in its Initial Brief regarding the hybrid bucket trucks by claiming that the average cost is based on only those hybrid bucket trucks purchased in 2009, rather than including all the hybrid bucket trucks it has purchased in the past. With this further clarification, below is a table showing all of the hybrid bucket trucks that ComEd purchased in 2009. (Staff Ex. 2.0 (Rev.), pp. 7-8) ... [table excluded, see page 20 of Staff RB]

Once again, ComEd's claims are unsupported. ComEd's own invoices for hybrid bucket trucks purchased by ComEd in 2009 show that the actual average price paid by ComEd is \$222,675, not the \$250,000 that ComEd claims in its Initial Brief. As Staff and several intervenors note, ComEd has an economic incentive to inflate its proposed budgets. (AG IB, pp. 16, 18, 41; CUB IB, pp. 14, 20; CTA IB, pp. 3, 5, 7; IIEC IB, pp. 11-13, 17, 22; Metra IB, pp. 3, 5, 8, 14; Staff IB, pp. 13-14, 27, 52-53) Moreover, Staff demonstrates not only that ComEd has an incentive to inflate its budgets under its proposed Alt. Reg. plan, but that it has in fact inflated its proposed EV Pilot budget. (Staff IB, pp. 29-30, 32, 34, 36-38, 41) (Staff RB, pp. 19-21, emphases in original)

(Rev.), pp. 7-8; Staff IB, p. 32; Staff RB, pp. 19-21) Therefore, ComEd's arguments in this regard should be dismissed.

ComEd argues, "The Proposed Order finds that, contrary to the rules of evidence, it is not enough in a 'budget' approval scenario for ComEd to prove its case – it must disprove every negative assertion by any other party. See PO at 91. ComEd has no such burden." (ComEd BOE, p. 21) The point that ComEd tries to make is ultimately irrelevant because ComEd did not prove its case to begin with. Further, ComEd failed to respond in its surrebuttal testimony to many of the outstanding EV Pilot budget issues and concerns raised and thoroughly described in Staff's rebuttal testimony, thus leaving these issues unresolved and its case far from proven. (Staff Ex. 9.0 (Rev.), pp. 5-8, 11-13, 18-21, 25-27) ComEd incorrectly argues that the evidence provided to support the EV Pilot budget is a "far more granular level of support than what is typically provided or examined in a rate case." (ComEd BOE, p. 7) As Staff explained regarding the EV Pilot budget:

With respect to future test years in a rate case, a statement from an independent certified public accountant on the preparation and presentation of various schedules is required, including schedules addressing forecasts and budget variances. (83 Ill Admin Code 285.7005 and 7010 and 7070) Here no such information has been provided.

(Staff RB, p. 23, emphasis added)

Budget estimates generated from unverifiable "conversations" are not the type of support that the Commission should rely on. (Staff IB, p. 38) Thus, the evidence ComEd provided in support of its budgets and its cost components here is far below the

quality of information that should be provided in a rate case. ComEd's arguments in this regard should be rejected.<sup>3</sup>

ComEd continues to argue that the expensive charging stations it proposed are "needed." (ComEd BOE, pp. 24-25) Staff has already thoroughly refuted this claim. (Staff IB, pp. 33-37; Staff RB, pp. 14-15, 18-19, 21-22)

ComEd Can "Substitute" Cheaper Equipment to "Game" its Budgets

ComEd argues that it cannot substitute cheaper equipment to game its budgets. (ComEd BOE, p. 23) However, ComEd notes in its IB that the Company is not held accountable for the specific vehicle types on which its budget was based. (ComEd Revised IB, p. 24; Staff RB, p. 24) In addition, Staff witness Ms. Hinman discussed how ComEd is not held accountable under Rate ACEP regarding specific technical specifications for any of its assets. (Tr., January 26, 2011, p. 279) ComEd's shifting position regarding which models of hybrid bucket trucks it plans to purchase clearly illustrates this issue. The evidence in the record indicates that after Staff highlighted the fact that ComEd's bucket truck budget was inflated based on ComEd's own invoices of hybrid bucket trucks with TA40 aerial equipment,<sup>4</sup> the Company shifted its position and claimed it plans to purchase hybrid bucket trucks with a variety of aerial equipment of unknown composition. (ComEd Ex. 7.0, pp. 2-3) In fact, it is still unclear the quantities of specific models of hybrid bucket trucks the Company would purchase under this Alt. Reg. proposal as the Company failed to specify in surrebuttal testimony the type of

---

<sup>3</sup> For more details, refer to Staff Ex. 9.0 (Rev.), pp. 5-8, 11-13, 18-21, 25-27.

<sup>4</sup> ComEd had indicated in its response to Staff data request JLH 1.09 that it proposed to purchase International chassis with Eaton hybrid drive system and Altec TA40 aerial equipment hybrid bucket trucks. (Staff Ex. 9.1, p. 40) ComEd witness McMahan's rebuttal testimony highlighted how the specific models of vehicles ComEd had previously provided in response to Staff data requests are unreliable.

aerial equipment to be purchased for the hybrid bucket trucks. (Staff IB, pp. 29-32; Staff RB, pp. 19-21) Therefore, the Company's position in this regard should be rejected.

#### Adverse Effect on Competitive Markets

The Commission should reject ComEd's proposed language on the finding under 9-244(b)(5). (ComEd Exceptions, No. 6, p. 46; ComEd BOE, pp. 52-53) On the issue of whether ComEd's proposal meets Section 9-244(b)(5) of the Act, ComEd cites to an argument made in its RB, "[T]he 'infrastructure' referred to in the record is delivery service infrastructure not charging infrastructure." (ComEd BOE, p. 52) Based upon that argument, ComEd argues there is no evidence in the record that the implementation of its program is likely to adversely affect the development of competitive markets. To clarify for the record, Staff specifically asked ComEd witness Hemphill under cross examination what he meant by the term 'infrastructure' in his rebuttal testimony. The evidentiary record shows that he indeed meant charging infrastructure,<sup>5</sup> not delivery service infrastructure as ComEd states in its RB. (Hemphill, Tr., January 26, 2011, pp. 443-444; ComEd RB, p. 56; ComEd Ex. 6.0, p. 31; Staff IB, pp. 57-58) Given the above, the expertise ComEd gains through operating these charging stations may give it a first-mover advantage that could adversely affect a

---

<sup>5</sup> Dr. Hemphill was asked about a news article that he referenced in his rebuttal testimony that he had added emphasis to. He quoted Acting Commission Chairman Flores: "It's not just about being able to hook up or plug in your electric car at home. ...It's also about being sure you have the necessary infrastructure so that you can facilitate the electrification of transportation throughout the state." (ComEd Ex. 6.0, p. 31, emphasis in original) The record clearly shows that Hemphill emphasized infrastructure as it relates to ComEd providing charging infrastructure. The transcript states:

Q [Staff Counsel] If I could direct your attention to your Exhibit 6.0, Line 684. Let me know when you have that in front of you.

A [ComEd witness Hemphill] Okay.

Q Now, do you see at Line 684, you underline the following words: "Being sure you have necessary infrastructure" and that is you were underlining part of a newspaper article in which acting Commissioner Chairman Florez [sic] was quoted, correct?

A Yes.

Q And did you underline the text there because you believe ComEd [sic] may be the provider of charging infrastructure?

A Yes, that's fair.

(Hemphill, Tr., January 26, 2011, pp. 443-444, emphases added)

potentially competitive EV charging station service provider market. (Staff IB, p. 58) Accordingly, the PO was correct to raise this as a concern and ComEd's exception on this issue should be rejected.

#### Staff's Recommendation

ComEd's BOE contains arguments about its EV Pilot program that Staff has already thoroughly rebutted and critiqued. (Staff IB, pp. 26-41, 57-58; Staff RB, pp. 12-35) Staff believes that on the EV Pilot issues, the PO's conclusions are correct, are amply supported by the record, and the only changes needed to the PO are those proposed by Staff as noted in its BOE. (Staff BOE, pp. 3-4, 7) Finally, there are no proposed modifications supported in the record that would cause the program to satisfy Section 9-244(b).<sup>6</sup>

### **V. SMART GRID**

ComEd states that the PO's conclusion that the smart grid terms should be deleted from Rate ACEP is in error in three aspects. (ComEd BOE, pp. 29-31) None of ComEd's arguments are convincing and ComEd's exceptions should be rejected.

First, ComEd claims that the PO is over-reliant on the Smart Grid Policy Docket as the venue for determining a cost recovery mechanism for smart grid investments. (*Id.*, pp. 29-30) ComEd also repeats its oft-stated claim that absent Commission approval of its proposal in this proceeding, "the benefits to customers, the Northern Illinois economy, and society will be delayed and lost." (*Id.*, p. 31)

---

<sup>6</sup> Section 9-244(b) provides that if the Commission cannot make the findings with respect to 9-244(b), it shall specifically identify in its order the reasons why the program does not meet the criteria of 9-244(b) and shall identify any modifications supported in the record if any that would cause the program to meet the criteria of 9-244(b).



Staff agrees that the Smart Grid Policy Docket might not establish permissible cost recovery mechanisms for future smart grid investments. The Commission has not yet initiated the Policy Docket, so it is unknown at this time whether the docket will determine cost recovery policies, as the PO recommends. (PO, pp. 99-100) What is known, however, is that in the Commission's Final Order in Docket No. 07-0566, the Commission envisioned that ComEd would file a cost recovery mechanism (a rider) in an implementation docket following the Policy Docket. The Final Order in Docket No. 07-0566 states that:

The Statewide Smart Grid Collaborative should begin to immediately consider smart grid policy issues in Illinois. That collaborative process is to be followed by a Commission docket to adopt specific goals and policy framework related to the deployment of a smart grid in Illinois. Thereafter, ComEd may file a plan for implementation and re-file its request for rider recovery of smart grid investments. (Final Order, Docket No. 07-0566, September 10, 2008, p. 143, emphasis added)

As Staff has pointed out, the timetable for ComEd proposing and undertaking smart grid investments is virtually the same in the current ComEd proposal as the timetable described in the Docket No. 07-0566 Final Order. (Staff IB, p. 48) Additionally, if the Policy Docket sets smart grid cost recovery policies, cost recovery policies will be established even more quickly than under ComEd's proposal here. Thus, ComEd's argument that denial of its smart grid cost recovery proposal in this proceeding would delay the potential benefits of the smart grid is without merit.

Second, ComEd states that the approval of a smart grid cost recovery mechanism as part of Rate ACEP will not deprive the Commission of control over any smart grid decisions and that approval would only allow ComEd to coordinate policy and investment decisions. (ComEd BOE, p. 31) Staff agrees that under ComEd's plan, the Commission would retain the ability to approve smart grid investment proposals, given

that the Commission has already approved the cost recovery mechanism. However, the Commission would be approving the mechanism without knowing anything more than the broad outlines of a proposed investment. Including the smart grid terms in Rate ACEP would require a Commission conclusion that the same budget-based cost recovery mechanism proposed for small-scale programs, such as the EV Pilot and low-income program, is equally suitable for a large-scale program like smart grid. (Staff RB, pp. 37-38) The Commission should not make that conclusion given the scant amount of information available, and instead should review a proposed cost recovery mechanism in light of an actual proposal.

Third, ComEd states that, contrary to the PO's conclusions, advanced approval mechanisms can meet the statutory requirements of Section 9-244 of the Act. (*Id.*, p. 31) It is not clear what ComEd intends by this argument. This argument does not appear to respond to the discussion of the smart grid on pages 99-100 of the PO. Additionally, ComEd's BOE does not reference the portion of the PO in which, according to ComEd, the PO claims that advanced approval mechanisms cannot meet the statutory requirements of Section 9-244. Thus, Staff will not respond to this argument.

ComEd does appear to respond to the PO's conclusion that:

The Policy Docket is the appropriate proceeding to consider funding proposals for Smart Grid. The Commission sees ComEd's various warnings regarding the need to have a cost recovery mechanism in place now, but we find that adopting a cost recovery mechanism at this point of the process would be premature. Without considering all options for Smart Grid cost recovery, adopting Rate ACEP at this juncture would be inappropriate. (PO, pp. 99-100)

ComEd states that "The fact that a mechanism is now in place is not premature nor does it alter the requirements under Section 9-244." (ComEd BOE, p. 31) The PO

had ample reason to conclude that establishing a smart grid cost recovery mechanism would be premature. As noted by many parties, and as noted in the PO, the Commission already has a process in place to establish smart grid cost recovery policies. (PO, p. 31) Further, as just noted, it is not necessarily the case that the cost-recovery method for smart grid investments that could ultimately total in the hundreds of millions of dollars should be the same for the smaller-scale programs that ComEd proposes. Additionally, despite ComEd's claims of potential harm to Illinois, maintaining the schedule described in the Final Order in Docket No. 07-0566 will not materially delay the introduction of cost-effective smart grid investments in Illinois. (Staff RB, p. 37) Therefore, ComEd's argument that its introduction of the smart grid terms would not be premature is incorrect and should be rejected.

## **VI. CONCLUSION**

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding the Company's request for approval of an Alternative Rate Regulation Plan pursuant to Section 9-244 of the Public Utilities Act.

April 26, 2011

Respectfully submitted,

---

John C. Feeley  
Jennifer L. Lin  
Megan C. McNeill  
John L. Sagone

Office of General Counsel  
Illinois Commerce Commission  
160 North LaSalle Street, Ste. C-800  
Chicago, Illinois 60601  
(312) 793-2877

Counsel for the Staff of the  
Illinois Commerce Commission